Office - Supreme Court, U.S.
FILED
JUN 25 1982
ALEXANDER L. STEVAS,
CLERK

81-2358

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

AMERICAN NATIONAL BANK,

Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the judgment and opinion of the Court of Appeals should be vacated in light of *Pullman Standard* v. *Swint* since the appellate court independently weighed the evidence and entered judgment reversing District Court factual findings which were not clearly erroneous.

2. Whether a prima facie case of pattern and practice employment discrimination may be sustained solely by facial comparison of simple workforce percentages which are not statistically significant under this Court's *Castenada-Hazelwood* analysis.

3. Whether a Court of Appeals may independently infer a pattern and practice of employment discrimination based solely on statistics when all underlying individual claims of alleged discrimination have been litigated and found to be without merit.

This case also presents the following subsidiary question:

4. Whether, under 42 U.S.C. §2000e-5(f)(1), a court has jurisdiction over corporate facilities the employment practices of which were not the subject of a charge of discrimination, EEOC investigation, conciliation or reasonable cause determination.

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OPINIONS BELOW

The majority and dissenting opinions of the Court of Appeals (Pet. App. A) are reported at 652 F.2d 1176 (4th Cir. 1981); the Order of the Court of Appeals denying en banc rehearing (Pet. App. C) is not yet published. The opinion of the United States District Court for the Eastern District of Virginia (Pet. App. B) is not officially reported, but is published at 21 FEP Cases 1532 (E.D. Va. 1979).

A previous opinion of the Court of Appeals in this case is reported at 574 F.2d 1173 (4th Cir. 1978). This Court's denial of certiorari in that appeal is at 439 U.S. 876 (1978). The first District Court opinion is at 420 F.Supp. 181 (E.D. Va. 1976).

JURISDICTION

The judgment of the Court of Appeals was entered June 26, 1981. A timely petition for en banc rehearing was denied by the Court of Appeals on May 18, 1982. On May 26, 1982 the Fourth Circuit stayed its mandate for thirty days. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTE

The statute involved is Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e—2000e-17.

STATEMENT OF THE CASE

The January 21, 1976 Complaint in this action was based on a 1969 administrative charge of discrimination which had been investigated by EEOC in 1970. The District Court dismissed the action for laches on August 31, 1976; but the Court of Appeals vacated the dismissal order and remanded

on May 1, 1978. *EEOC* v. *American National Bank*, 574 F.2d 1173 (4th Cir.), *cert. denied*, 439 U.S. 876 (1978).

On remand the parties entered into a court approved stipulation that all issues of discrimination, including all fifty one (51) claims for individual relief, would be tried in a single unified proceeding. (Pet. App. 97, 116, 215). That was done December 11-14, 1978. (Pet. App. B).

On June 25, 1979 the District Court issued a 184-page opinion holding that the hiring practices challenged by EEOC were "legitimate business ones" which were not discriminatory whether analyzed "separately" or "in tandem", and that "the overall statistical evidence does not support an inference of disparate treatment". (Pet. App. 177-178). The Court entered separate findings of fact on each individual claim, holding that EEOC had not carried its burden of proof in any of those cases and that many of the claims were "frivolous". (Pet. App. 241).

> Many claimants did not apply in the same city where the vacancy in question existed or applied for jobs completely different from the vacancy.

(Pet. App. 241).

The District Court found, however, that EEOC had sustained a prima facie case solely on the basis of facial comparison between the percentages of blacks holding manager and clerical positions with the bank and the census percentages of black managers and clericals in the surrounding labor areas. (Pet. App. 135-138). Though noting that simple static percentages might be "misleading" for the "quite small" numbers of employees involved, the Court nevertheless found that "from 1969 to 1975 blacks were underrepresented in defendant's workforce" and that the percentage disparities alone constituted "prima facie statistical

proof of a pattern or practice of discrimination." (Pet. App. 137, 138).

Upon further statistical analysis and upon consideration of actual applicant and hiring ratios, however, the District Court found the prima facie case to be rebutted.

> [T]he Court finds that the imbalance was a product of pre-1969 activities. This case concerns the conduct of defendant between 1969 and 1975. The available hiring statistics, the Hazelwood-Castenada analysis, the evidence concerning hiring practices of defendant and the 31 cases of unsuccessful black applicants who testified at trial substantially outweigh and refute the EEOC's statistical evidence. Defendant did not engage in a pattern or practice of discrimination between 1969 and 1975, and none of the 31 applicants who testified were discriminated against because of their race.

(Pet. App. 214-215).

The Court of Appeals for the Fourth Circuit reversed. By a 2-1 panel opinion of June 26, 1981, the Court of Appeals held that the District Court had correctly inferred a prima facie case based on simple percentage comparisons, but concluded that the District Court "erred in holding that defendant's rebuttal evidence was sufficient to overcome the prima facie case." (Pet. App. 2).

The Court of Appeals ruled that the extensive proof introduced on the 51 individual claims should have been "simply set aside as a neutral factor in the overall assessment of the evidence" (Pet. App. 39), and that it was "unlikely" the applicant flow statistics were "reliable", as found by the District Court. (Pet. App. 28, 30). Though acknowledging that many of EEOC's allegations of discriminatory hiring practices were "irresponsible" in light of the trial evidence (Pet. App. 34 n. 18), the Court ruled it was error for the

District Court to consider "objective and consistently applied" practices as evidence in rebuttal of the prima facie case. (Pet. App. 38). As for the District Court's finding that the *Hazelwood-Castenada*[1] standard deviation analysis neutralized the statistical prima facie case, the Court of Appeals held as follows:

> The conclusion was based on an apparent assumption that if standard deviations reflected in static work force statistics were not 'more than two or three' the disparities were necessarily shown to be statistically insignificant. 21 FEP Cases at 1558-59. This assumption is simply incorrect.

(Pet. App. 20).

The Court of Appeals then held that when "analyzed free of the identified errors"

> the total evidence established the existence of a discriminatory pattern or practice of hiring in violation of Title VII that requires remand for the determination of appropriate relief.

(Pet. App. 40).

Despite the pre-trial stipulation the Court of Appeals held that the District Court's findings of fact on individual claims would, on remand, "have no preclusive effect" since those claims had not been tried "to establish entitlement to individual relief." (Pet. App. 39, 41). As to those claims the Court of Appeals assigned defendant the burden of "showing by a preponderance of the evidence that nondiscriminatory factors motivated the decision not to hire." (Pet. App. 41).

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[1] *Hazelwood School District* v. *United States*, 433 U.S. 299, 308-09, n. 14, 311 n. 17 (1977); *Castenada* v. *Partida*, 430 U.S. 482, 496-97, n. 17 (1977).

By 5-5 vote on May 18, 1982, the Court of Appeals for the Fourth Circuit denied the bank's Petition for Rehearing and Suggestion for Rehearing En Banc. (Pet. App. C).

REASONS FOR GRANTING THE WRIT

1. Conflict Among The Circuits

The rule of the Fourth Circuit in this case is in direct conflict with that of the Fifth and Eighth Circuits on the question whether a prima facie case of employment discrimination may be sustained by facial comparison of raw percentages without analysis for statistical significance. Compare *EEOC* v. *American National Bank,* 652 F.2d 1176 (4th Cir. 1981), *reh. denied* ..... F.2d ..... (May 18, 1982) with *Rivera* v. *City of Wichita Falls,* 665 F.2d 531 (5th Cir. 1982) and *Eubanks* v. *Pickens-Bond Construction Co.,* 635 F.2d 1341 (8th Cir. 1980).

In *Rivera* the Fifth Circuit upheld a District Court's refusal to infer a prima facie case of discrimination from employment and labor force percentage disparities because analysis revealed those disparities to be less than the 2-3 standard deviation range established by this Court in *Castenada* v. *Partida,* 430 U.S. 482, 496-97, n. 17 (1977) and *Hazelwood School District* v. *United States,* 433 U.S. 299, 311 n. 17 (1977).

> The plaintiffs vigorously contend that any discrepancy unfavorable to the class emerging from a simple comparison of the percentages is evidence of discrimination adequate to support a prima facie case. This argument flies in the face of rudimentary principles of sound statistical analysis.
>
> * * *
>
> The Supreme Court's sophisticated statistical analysis in *Hazelwood* . . . and *Castenada* . . . clearly articulated

> the measure by which the adequacy of statistical proof is to be determined.
>
> * * *
>
> These cases indicated that an inference of purposeful discrimination fairly could be drawn "[a]s a general rule for such a large sample, if the difference between the expected value and the observed number is greater than two or three standard deviations".

665 F.2d at 545, n. 22.

In *Eubanks*, as in the present case, the District Court found a prima facie case to be sustained on the basis of simple percentage comparisons. But the Eighth Circuit reversed, holding that analysis for statistical significance was required *prior* to inference of a prima facie case.

> The district court merely stated the actual number and percentage of black foremen for the three years in question and the number and percentage of black cement finishers on the First National Bank job during that period. To infer a prima facie case of discrimination from these numbers and percentages, the court needed to go beyond presentation of the raw data to application of an appropriate and recognized test for determining the statistical significance of any observed disparity. See *Mayor* v. *Educational Equality League*, 415 U.S. 605, 619-20 (1974) (rejecting as unreliable "simplistic percentage comparisons" of the racial composition of a thirteen member nominating panel and the population of Philadelphia); *Hazelwood School District* v. *United States, supra*, 433 U.S. at 308-09 n. 14, 15 FEP Cases at 5 (standard deviation analysis).

635 F.2d at 1349-50.

The Fourth Circuit in this case, however, has squarely approved the District Court's finding of prima facie discrimination based on simple percentage comparisons, even though subsequent standard deviation analysis showed that

the disparities in the percentages relied on consistently "remained less than two." (Pet. App. 152).

The Fourth Circuit's approval of un-analyzed statistics as the sole basis of a prima facie case has drawn vigorous dissents at both the panel and en banc levels.

> In the instant case, both the district court and the panel majority, in finding a prima facie case had been proven by statistics, committed the same error of drawing conclusions from straight percentage comparisons without taking into account sample size at all. The majority justified its finding of a prima facie case through the use of straight percentage comparisons by saying:
>
> > As frequently observed by the Supreme Court and as recognized by the district court, gross statistical disparities in the static workforce during the relevant period may alone constitute prima facie proof of the discriminatory practice. *Hazelwood,* 433 U.S. at 307-08; . . . .
>
> * * *
>
> Clearly then the term "gross statistical disparity" in the Hazelwood opinion does not mean a seemingly large difference in straight percentages comparisons; it means disparities must be found at the conclusion of statistical analysis using standard deviations.
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> * * *
>
> It is important to emphasize that such formulae are of no value, and thus statistical evidence is also of no value, unless a court employs them at the proper point in the judicial process and that point is before the court finds a prima facie case on the basis of statistical evidence.

(Pet. App. 250-251) (Widener, J., dissenting).

The Fourth Circuit's rule on the appropriate analysis of statistics for a prima facie case cannot be reconciled with the views of the Fifth and Eighth Circuits. Particularly be-

cause of the importance of this question to a large volume of federal litigation and agency administration, this Court should grant certiorari to resolve the conflict in the Circuits. See, e.g., *Texas Department of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981); *Mohasco Corp.* v. *Silver*, 447 U.S. 807 (1980); *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975).

It is particularly appropriate for a Writ of Certiorari to issue to the Fourth Circuit in this case since it is the opinion of the Fourth Circuit, rather than those of the Fifth and Eighth, which is in apparent conflict with this Court's previous opinions on the use of statistical evidence in discrimination cases. The use of raw statistics to infer a prima facie case is contrary to this Court's warning in *Mayor* v. *Educational Equality League*, 415 U.S. 605, 620 (1974) against reliance on "simplistic percentage comparisons", for example; and the Court's inference of pattern and practice discrimination based on statistical standard deviations of "less than two" (Pet. App. 152) is contrary to the rule of *Hazelwood* and *Castenada* that an intent to discriminate will "generally" not be inferred from statistical disparities unless they are "greater than two or three standard deviations". *Hazelwood, supra* at 309 n. 14, quoting *Castenada, supra* at 497.[3]

The clear conflict between the Fourth Circuit opinion

[3] In fact the Fourth Circuit refused to consider standard deviations of "not more than two or three" as rebuttal evidence (Pet. App. 23-24), notwithstanding this Court's statement that disparities of "less than two standard deviations" "may be sufficiently small to weaken the Government's other proof". *Hazelwood, supra* at 311, n. 17. In Petitioner's view, of course, it was improper to restrict the use of standard deviation analysis to the rebuttal case. By so doing, and by requiring defendant to produce rebuttal evidence to "affirmatively reveal nondiscrimination" (Pet. App. 16), the Court improperly assigned the burden of proof. See *Burdine, supra* at 253-254.

below and the principles enunciated in this Court's previous decisions on statistical evidence provides yet another independent reason for granting the writ in this case. See, e.g., *Ivan Allen Co.* v. *United States,* 422 U.S. 617, 623-24 (1975).

2. Unresolved Conflict Within the Fourth Circuit

The Fourth Circuit is internally deadlocked over the use of statistics as prima facie evidence of employment discrimination. As revealed by the 5-5 vote to deny en banc rehearing in this case and by the vigorous dissents from both the en banc denial and the panel opinion, the judges of the Fourth Circuit are evenly split on the issue of statistical prima facie proof. The precise nature of the split is highlighted by comparison of the panel majority opinion in this case with the panel majority opinion in the almost identical case of *EEOC* v. *United Virginia Bank*, 615 F.2d 147 (4th Cir. 1980).

Like the instant case, *UVB* involved the hiring of manager and clerical employees for a bank in eastern Virginia. The EEOC similarly attempted to sustain a prima facie case by simple comparison of static workforce and labor force figures. 615 F.2d at 149. The two cases were tried before the same District Court Judge. Unlike the appellate panel in this case, however, the Fourth Circuit panel in *UVB* applied the *Hazelwood-Castenada* standard deviation test to EEOC's static figures *before* drawing any inference from mere percentage disparities; and it concluded that a standard deviation of 2.36 was a "borderline" figure which did "not suffice to prove a prima facie case of discrimination." *Id.* at 153. Contrary to the present case, *UVB* held that it was the plaintiff's prima facie burden, not defendant's rebuttal burden, to adduce statistical evidence not improperly weighted by hiring decisions made outside the period under scrutiny. *Id.* at 150.

The statistical methods and burden of proof allocations in *UVB* and the present case cannot be reconciled. Nor can any guidance for the district courts in the Circuit be devined when one panel holds that a "borderline" standard deviation of 2.36 is insufficient as prima facie proof, *UVB, supra* at 152, while another holds that standard deviations of "not more than two or three" "could not properly be taken as dispelling the inference of discrimination based upon the disparities in the static work force data." (Pet. App. 23-24). As Judge Russell noted in dissent from the panel decision,

> Such inconsistency in decision is unfortunate and properly raises doubts in the public mind about even-handedness. I am unable to see how we can decide one case in favor of the defendant and not do likewise here. The rights of parties when they are the same, as I submit they are in the two cases, should not vary with different panels of the same Court.

(Pet. App. 93).

This intra-Circuit conflict, coupled with the conflict among the Circuits on this important question of interpreting Supreme Court decisions on statistical proof, is yet another reason a writ of certiorari should be granted in this case. See, e.g., *United States ex rel. Robinson* v. *Johnston*, 316 U.S. 649 (1942); *Carnissina* v. *Estate of Bosch*, 387 U.S. 456, 457 (1967); *Rinaldi* v. *United States*, 434 U.S. 22 (1977); *Ratchford* v. *Gay Lib.*, 434 U.S. 1080 (1978) (Rehnquist, J., dissenting)

3. Supervening Supreme Court Decision

The decision of the Fourth Circuit is in direct contradiction of this Court's recent opinion in *Pullman-Standard, Inc.* v. *Swint*, 50 U.S.L.W. 4425 (U.S. April 27, 1982). The *Swint* decision made it plain that findings of fact in Title

VII cases are not reversible by a Court of Appeals unless "clearly erroneous" and that, if the District Court's finding on the "ultimate fact" of discriminatory intent is set aside for error of law, "the Court of Appeals is not relieved of the usual requirement of remanding for further proceedings to the tribunal charged with the task of fact-finding in the first instance." *Id.* at 4430. Those are precisely the errors of the Fourth Circuit panel majority below.

The District Court's finding of "ultimate fact" in this case was that

> EEOC has not established by a preponderance of the evidence that racial discrimination was defendant's standard operating procedure between 1969 and 1975. See *International Brotherhood of Teamsters* v. *United States*, 431 U.S. 324, 336.

(Pet. App. 214).

In order to reverse that finding the Court of Appeals freely overturned subsidiary factual findings without reference to the clearly erroneous standard; and it repeatedly substituted its independent judgment on the weight of evidence for that of the District Court.

The District Court considered and explained in detail, for example, the basis for its conclusion that applicant flow statistics were "reliable" and entitled to weight as rebuttal evidence. (Pet. App. 141-142). Yet the Court of Appeals dismissed that critical finding based on its independent literary assessment that the data's reliability "seems highly unlikely on the record we review" and that the District Court therefore assigned too much weight to that evidence. (Pet. App. 30, 15).

The District Court also found as fact that the total number of hiring decisions under review in the case "39 in Suf-

folk from 1969 to 1975—an average of 5.5 per year—and 24 in Portsmouth for 1975" were "too few to justify an inference that defendant had engaged in a regular practice of discrimination." (Pet. App. 147). This evaluation of the "usefulness" of statistical evidence based on "all of the surrounding facts and circumstances" was the proper province of the District Court. *International Brotherhood of Teamsters* v. *United States*, 431 U.S. 324, 340 (1977); and *see Inwood Laboratories, Inc.* v. *Ives Laboratories, Inc.*, 50 U.S.L.W. 4592, 4596 (U.S. June 1, 1982). Though not finding the District Court's evaluation clearly erroneous on this point, the Court of Appeals nevertheless found the numbers "quite sufficient as a basis for inferring the pattern of discrimination," (Pet. App. 28) notwithstanding the "danger of unfairness to the employer in resting inferences of discriminatory practices on proof involving small total numbers of employment decisions . . . ." (Pet. App. 26).

Similarly the Court of Appeals decided, again without reference to the clearly erroneous standard, that the District Court should have assigned no weight whatever to the live testimony of over 30 witnesses whom the trial court had observed. (Pet. App. 39).

The Court of Appeals' own description of the perceived error below makes it plain that, like the Fifth Circuit in the decision reversed in *Swint*, the Fourth Circuit erroneously believed the weighing of evidence to be a matter of law for the appellate court.

> Specifically, we find errors of law in the weight apparently assigned by the court to a standard deviation analysis of certain of the statistical evidence; in the significance which the court assigned to ANB's applicant flow statistics as rebutting evidence; and in the way in which the court treated the relationship between the

> statistical and nonstatistical evidence offered to prove the discriminating pattern and practice charged.

(Pet. App. 15).

As Judge Russell noted in dissent from the panel decision, the assigned flaws are thus "errors in the weight or significance to be assigned to the evidence", yet "the majority treats them as 'errors of law' and thus not subject to the clear error rule for appellate review". (Pet. App. 70). *But see Inwood, supra* at 4596.

Even if the panel majority were correct in characterizing its reversal of the District Court's findings as a matter of law, its decision is still contrary to *Swint* since the appellate court proceeded independently to find the facts under its view of "controlling legal principle" (Pet. App. 40), rather than "remanding for further proceedings to the tribunal charged with the task of fact-finding in the first instance." *Swint, supra* at 4430.[3]

Where a Court of Appeals' opinion is so clearly contradictory of principles enunciated in a subsequent Supreme Court decision, this Court has held repeatedly that summary remand for reconsideration in light of the recent Supreme Court case is appropriate.[4] See, e.g., *Uncle Ben's, Inc.* v.

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[3] The Court of Appeals' remand solely "for the determination of relief" is erroneous also because it assigns defendant the burden of proving "by a preponderance of evidence that nondiscriminatory factors motivated the decision not to hire". (Pet. App. 41). This Court made it plain in *Texas Department of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981) that an employer bears no such burden of proof under Title VII, either as a matter of producing evidence or persuading the trier of fact. *Id.* at 257.

[4] This Court's April 27, 1982 opinion in *Swint* preceded the May 18, 1982 denial of en banc rehearing by the Fourth Circuit in the instant case. The Petition for Rehearing was briefed months ago, however, and there is no indication in the Order denying rehearing, or in the lengthy dissent therefrom, that the Fourth Circuit considered the *Swint* case before it denied rehearing.

Johnson, 451 U.S. 902, vacating 628 F.2d 419 (5th Cir. 1980); *Union Carbide Corp., Consumers Products Division* v. *Nance,* 431 U.S. 952, vacating 540 F.2d 718 (4th Cir. 1976); *Western Gillette, Inc.* v. *Sabala,* 431 U.S. 951, vacating 516 F.2d 1251 (5th Cir. 1975); *Detroit Edison* v. *EEOC,* 431 U.S. 951, vacating 515 F.2d 301 (6th Cir. 1975).

4. Unfairness of the Fourth Circuit's Decision

Because nine (9) years had passed when this case came to trial, the parties carefully defined the issues and claims to be tried.[5] With approval of the Court, the parties stipulated "that the potential individual claims in this action are limited to the fifty one (51) individuals named" (J.A. 293—Stip. ¶ 41),[6] "that the potential claimants have received actual notice of this action" (J.A. 293—Stip. ¶ 42) and that the "parties are aware of no other potential individual claims of hiring discrimination other than those which may be presented by the charging party and the persons listed." (J.A. 289—Stip. ¶ 19). Every hiring decision in the relevant period was reviewed and the parties stipulated the "identity

[5] The Fourth Circuit also reversed the lower court's decision declining to assert jurisdiction over Petitioner's seven Portsmouth banks. The appellate court did so despite the lack of a charge of discrimination, EEOC conciliation, or reasonable cause determination concerning the Portsmouth operations (Pet. App. 111-112) and despite EEOC's declaration that Portsmouth's employment practices were "irrelevant" to its investigation of Petitioner's two Suffolk banks. (Pet. App. 100). The panel's conclusion on this issue is contrary to the Fourth Circuit's decision in *EEOC* v. *General Electric Co.,* 532 F.2d 359 (4th Cir. 1976) and creates intolerable procedural uncertainties for multi-plant employers. *EEOC* v. *Sears, Roebuck and Co.,* ..... F.Supp. ....., 23 FEP Cases 43 (S.D.N.Y. 1980), *aff'd,* 650 F.2d 14 (2nd Cir. 1981); *EEOC* v. *Sears, Roebuck and Co.,* 490 F.Supp. 1245 (M.D. Ala. 1980).

[6] J.A. references are to the pages of the Joint Appendix submitted to the appellate court and Stip. references are to the pre-trial stipulations of the parties, approved by the District Court.

of each potential claimant, his or her date of application and the persons allegedly preferred over each, by application date, hire date, and job hired into." (J.A. 293—Stip. ¶ 41). EEOC represented that all individual claimants would be "present to testify at trial." (J.A. 338). The parties agreed and the Court ordered that issues at trial would be

> Whether any of the individual claimants who EEOC presents at trial were denied employment by American National Bank because of their race [and]
>
> * * *
>
> what relief, if any, is appropriate.

(Pet. App. 97; J.A. 284)

The bulk of the trial below was consumed with testimony about the particular merits of individual claims, including back pay and interim earnings evidence. The parties fully briefed and argued each individual claim. The District Court entered detailed findings as to each such claim, none of which were found to be erroneous by the appellate court.

For the Court of Appeals then to observe, without discussion, "that the evidence was not offered at this stage to establish entitlement to individual relief" and must be "set aside as a neutral factor in the overall assessment of the evidence" (Pet. App. 39) was wholly arbitrary and unjust. (Pet. App. 92) (Russell J., dissenting). It was in addition another example of appellate court unprincipled reassignment of evidentiary weight in contradiction of this Court's decision in *Swint*.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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June 25, 1982

CERTIFICATE OF SERVICE

I, Paul M. Thompson, counsel for the Petitioner, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have served all parties required to be served by depositing three copies of the foregoing Petition for Writ of Certiorari and Appendix thereto in the United States Mail, first class postage prepaid, this 25th day of June, 1982, addressed to: The Solicitor General of the United States, Department of Justice, Washington, D. C. 20530; Michael J. Connolly, General Counsel, and Constance L. Dupre, Esq., and William H. Ng, Esq., Office of the General Counsel, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D. C. 20560; William K. Slate, II, Clerk, United States Court of Appeals for the Fourth Circuit, Richmond, Virginia 23219.

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